

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 558/MP/2025

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Shri Ravinder Singh Dhillon, Member

Date of Order: 10.04.2026

In the matter of:

Petition under Section 79(1) of the Electricity Act, 2003, read with Regulation 65 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023.

And

In the matter of:

- 1. NRSS XXIX Transmission Limited,**
Unit No. 101, First Floor, Windsor, Village Kole Kalyan,
Off CST Road, Vidyanagari Marg, Kalina,
Santacruz (East), Mumbai, Maharashtra-400 098

..... **Petitioner**

Versus

- 1. Northern Regional Power Committee (NRPC),**
18-A, Qutab Institutional Area,
Shaheed Jeet Singh Marg,
Katwaria Sarai, New Delhi-110016
..... Respondent No. 1
- 2. Central Electricity Authority (CEA),**
Sewa Bhawan, R.K. Puram,
Sector-1, New Delhi-110066
..... Respondent No. 2
- 3. Border Roads Organization (BRO),**
Seema Sadak Bhawan, Ring Road,
Naraina, Delhi Cantt, New Delhi-110010
..... Respondent No. 3
- 4. AD Hydro Power Limited,**
Bhilwara Towers, A-12, Sector 1,
Noida-201301, Uttar Pradesh
..... Respondent No. 4



5. **Haryana Power Purchase Centre,**
UHBVN, IP 3& 4, 4th floor, Sector 14,
Panchkula, Haryana – 134113 Respondent No. 5

6. **Punjab State Power Corporation Limited,**
The Mall, PSEB Head Office,
Patiala, Punjab 147001 Respondent No. 6

7. **Himachal Sorang Power Pvt. Ltd.,**
Sorang HEP (100 MW), Distt. Kinnaur, H.P. D-7,
Lane-I, Sector-I, New Shimla,
Shimla, Himachal Pradesh – 171009 Respondent No. 7

8. **Adani Power Limited, Mundra,**
Adani Corporate House, Shantigram, SG Highway,
Ahmedabad, Gujarat-382421 Respondent No. 8

9. **Jaipur Vidyut Vitran Nigam Limited,**
Vidyut Bhawan, Janpath,
Jaipur - 302005, Rajasthan Respondent No. 9

10. **Ajmer Vidyut Vitran Nigam Limited,**
Old Power House, Hathi Bhata,
Ajmer -305001, Rajasthan Respondent No. 10

11. **Jodhpur Vidyut Vitran Nigam Limited,**
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan Respondent No. 11

12. **MEIL Anpara Energy Limited** (formerly Lanco Anpara Power Limited)
Regulatory & Fuel Management
Registered address: H. No. C/02/177, Sector C,
Pocket 2 Sushant Golf City,
Sushant Golf City, Lucknow,
Lucknow, Uttar Pradesh, India - 226030. Respondent No. 12

13. **Lanco Green Power Pvt. Ltd.,**
Greenko Group Plot No. 1366, Road No. 45,
Jubilee Hills, Hyderabad,
Andhra Pradesh – 500033 Respondent No. 13

14. **Power Development Deptt., Govt. of J&K,**
Exhibition Ground, Opposite J&K High Court,
Srinagar, Jammu and Kashmir -190009 Respondent No. 14

15. **North Central Railway,**
ORM Office, Nawab Yusuf Road,
Allahabad, Uttar Pradesh- 211015 Respondent No. 15

16. **Jaiprakash Power Ventures Limited,**
Corporate Office at:
"JA House", Basement (Right Wing),



- 63, Basant Lok, Vasant Vihar, New Delhi – 110057 Respondent No. 16
- 17. BSES Yamuna Power Limited,**
Shakti Kiran Building,
Karkardooma, Delhi-110032 Respondent No. 17
- 18. BSES Rajdhani Power Limited,**
2nd Floor, B-Block, BSES Bhavan,
Nehru Place, New Delhi-110019 Respondent No. 18
- 19. Tata Power Delhi Distribution Limited,**
NDPL House, Hudson Lines,
Kingsway Camp, Delhi - 110009 Respondent No. 19
- 20. New Delhi Municipal Corporation,**
Palika Kendra Parliament Street,
New Delhi-110001 Respondent No. 20
- 21. Electricity Wing of Engineering Department, Chandigarh,**
Electricity 'op' circle, 5th floor,
UT Secretariat, Sector 9-D,
Chandigarh-160009 Respondent No. 21
- 22. Power Grid Corporation of India Limited**
(HVDC Rihand & HVDC Dadri),
Commercial & Regulatory Cell,
Power Grid Corporation of India Ltd.,
'Saudamini', Plot No.2, Sector 29, Gurgaon, Haryana-122001 Respondent No. 22
- 23. U.P. Power Corporation Limited,**
10th Floor Shakti Bhawan Extn.,
14 Ashok Marg, Lucknow, Uttar Pradesh- 226001 Respondent No. 23
- 24. PTC (BUDHIL), PTC India Limited,**
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi -110066 Respondent No. 24
- 25. PTC (EVEREST), PTC India Limited,**
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi -110066 Respondent No. 25
- 26. Uttarakhand Power Corporation Limited,**
V.C.V. Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun, Uttarakhand - 248001 Respondent No. 26
- 27. Himachal Pradesh State Electricity Board,**
HPSEB Ltd. Vidyut Bhawan,
Shimla - 171004, Himachal Pradesh Respondent No. 27

Parties Present:

Shri Venkatesh, Advocate, NRSS XXIX
Shri Aniket Kanhaua, Advocate, NRSS XXIX
Ms. Manu Tiwari, Advocate, NRSS XXIX
Ms. Dhrubajyoti Sutradhar, NRSS XXIX
Shri Lokendra Ranawat, NRSS XXIX
Ms. Aparajita Upadhyay, NRSS XXIX
Shri Aditya Tiwari, NRSS XXIX

ORDER

M/s NRSS XXIX Transmission Ltd (hereinafter referred as NRSS) has filed the instant Petition under section 79 of the Electricity Act, 2003 read with regulation 65 of the CERC (Conduct of Business) Regulations, 2023 seeking directions to NRPC to grant deemed availability for its 400 kV Sambha - Amargarh transmission line (hereinafter referred to as SA line) during the shutdown/ outage period from 20.1.2022 to 8.2.2022 ("Outage Period") in light of the "Revised Standard Operating Procedure for Shifting of Transmission Lines for other Infrastructure Projects" dated 14.1.2025 issued by the CEA.

2. The Petitioner has made the following prayers in the present Petition:

- (a) Allow the present Petition;*
- (b) Issue necessary direction(s) to Northern Regional Power Committee in accordance with the revised Standard Operating Procedure for Shifting of Transmission Lines for Infrastructure Projects dated 14.01.2025 issued by the CEA to certify the availability of Petitioner for the months of January-February 2022, after excluding the period of outage from 20.01.2022 to 08.02.2022 from the total time under consideration; and/or*
- (c) Pass any further order(s)/ direction(s) that this Hon'ble Court may deem fit in nature of the facts and circumstances of the present case.*

Submissions of the Petitioner:

3. Petitioner has made the following submissions:

- (a) The present Petition is in furtherance of NRPC's direction, vide letter dated 22.04.2025, wherein NRPC has directed the Petitioner to approach this Commission for consideration of the Petitioner's claim of deemed availability for the Outage Period (from 20.01.2022 to 08.02.2022) in terms of SOP dated 14.01.2025, in terms of the liberty granted by the Tribunal vide Order dated 23.01.2025.



- (b) CEA has specified the 'Standard Operating Procedure for Shifting of Transmission Lines for Infrastructure Projects,' *vide* SOP dated 14.01.2025, to *inter alia* ensure the safety and operational continuity of transmission lines during construction activities undertaken by Project Developers such as the NHAI, BRO, and Railways.
- (c) Petitioner had approached NRPC for the grant of deemed availability for this Outage Period, citing that the SA Line was adversely impacted due to road expansion works undertaken by BRO around August 2021. However, NRPC, *vide* certificate dated 10.05.2022, and CEA, *vide* letter dated 25.08.2022, refused to grant deemed availability.
- (d) Aggrieved by the decisions of the NRPC and the CEA, Petitioner on 10.10.2022 filed Petition No. 318/MP/2022 before this Commission seeking deemed availability for the said Outage Period, Commission *vide* its Order dated 19.04.2024 in said Petition, refused to interfere with the decision of the NRPC.
- (e) Aggrieved by the denial of deemed availability due to no fault of the Petitioner, the Petitioner was constrained to prefer an Appeal before the Hon'ble Tribunal, being Appeal No. 277 of 2024, challenging the Order dated 19.04.2024. During the pendency of the appeal, MOP/CEA felt the need to bring greater clarity to the SOP dated 10.03.2023 and to simplify and further streamline it. CEA issued the revised SOP dated 14.01.2025.
- (f) The SOP dated 14.01.2025 empowers the Regional Power Committee ("RPC") to grant *deemed* availability in cases where ISTS transmission lines are affected due to road construction or infrastructure works undertaken by Project Developers such as the BRO. Considering the same Hon'ble Tribunal granted liberty for availing any such remedies as are available to them in law, insofar as the proceedings dated 14.01.2025 are concerned. In view of the liberty granted by the Hon'ble Tribunal, and in light of the SOP dated 14.01.2025, Petitioner submitted a representation to the NRPC on 13.02.2025 to review the availability granted for the period January - February 2022 while *inter alia* stating that the excavation work undertaken by the BRO within the right of way of Petitioner destabilized its tower at location 286 ("Impacted Tower") leading to the alteration of SA Line section.
- (g) NRPC, *vide* its letter dated 22.04.2025, stated that "Hon'ble APTEL... has directed that the appellant be permitted to withdraw the above IA with liberty to approach CERC. In view of the above order, it is conveyed that NRSS XXIX has liberty to approach Hon'ble CERC for any further action in the above matter."
- (h) On 14.01.2025, the CEA issued its revised SOP for the shifting of the Transmission line for other infrastructure projects, dated 14.01.2025, wherein the following salient features are highlighted:
- (i) The SOP covers within its ambit the construction activity having national importance by infrastructure project developers like NHAI, BRO, Indian Railways, etc.

- (ii) In case these projects of national importance interfere with the regular operation of existing transmission lines, such transmission lines are required to be shifted/ altered.
 - (iii) Such an alteration of the transmission line requires a substantial outage of the concerned transmission lines.
 - (iv) The said SOP dated 14.01.2025, provides that the outage of these transmission lines shall not be attributable to these infrastructure project developers and the transmission lines should be considered as deemed available.
 - (v) Hence, the case of the Petitioner, in essence and spirit, is covered by the aforementioned SOP.
- (i) In its SOP dated 14.01.2025, CEA consciously removed the temporal limitation and allowed transmission licensees to apply for deemed availability certification irrespective of the date of shutdown. CEA has deliberately decided to grant relief to transmission licences, even in cases of past line shifting. It is humbly submitted that this modification to the SOP dated 14.01.2025 is of great significance to the Petitioner, as it has granted power to NRPC to consider the Petitioner's case in the right context and grant deemed availability for the Outage Period.
- (j) The shutdown of the SA Line from 20.01.2022 to 08.02.2022 was necessitated solely due to unauthorised construction work carried out by BRO (an infrastructure developer identified under the SOP dated 14.01.2025).
- (k) The construction work was being carried out by BRO in the region, i.e., expansion of the Baflihar – Rajouri stretch of road. Although Petitioner was neither informed of nor consulted by BRO prior to initiating excavation works near the tower location. In this regard, it is relevant to note that there was an absence of a regulatory regime, which facilitated coordination between the Transmission Licensee and the Project Developer. This was subsequently provided through the SOPs issued by CEA from time to time, which mandate that the projects of national importance being developed by infrastructure developers (like BRO) are treated as per the SOP.
- (l) Clause 1 of the SOP dated 14.01.2025 mandates that any project developer intending to undertake infrastructure construction that may affect the safety of transmission lines must submit a formal application. However, this procedure was not in place at the relevant time.
- (m) BRO's road expansion works and excavation works destabilised the hill slope supporting the Impacted Tower, creating serious risks to its structural integrity and the safety of surrounding habitations. Petitioner raised concerns through written communications dated 10.08.2021 and 09.10.2021 and advised BRO to halt the ongoing works. Petitioner also acted proactively, undertaking a series of preventive and remedial measures aimed at stabilising the structure.
- (n) The restoration was completed in a record period of 20 days. Here, it is pertinent to highlight that in case the transmission line had failed, the CERC (Standards of

Performance of inter-State transmission licensees) Regulations, 2012 (“SOP Regulations, 2012”) provides for an outage period of 50 days from the date of such failure. Had the Petitioner not efficiently planned and executed the alteration work during the Outage Period of 20 days, power supply to the beneficiaries would have been disrupted for almost 50 days or more, depending on the extent of failure.

- (o) Petitioner was compelled to undertake the shutdown due to safety-critical exigencies caused by third-party activities, over which it had no control. This aspect has subsequently also been factored into the SOP dated 14.01.2025 by MOP/CEA. Petitioner is largely within the scope of SOP dated 14.01.2025, and the NRPC ought to have granted necessary relief.
- (p) As is evident from the SOP dated 14.01.2025, any outages arising out of other infrastructure projects of national importance are to be treated as deemed available.

Hearing dated 08.07.2025:

4. During the hearing dated 08.07.2025 learned counsel for the Petitioner submitted that the present Petition has been filed seeking urgent directions to the NRPC to grant deemed availability for its 400 kV Sambha – Amargarh transmission line during the shutdown/ outage period from 20.1.2022 to 8.2.2022 (“Outage Period”) in light of the “Revised Standard Operating Procedure for Shifting of Transmission Lines for other Infrastructure Projects” dated 14.1.2025 issued by the CEA and a liberty granted by the Appellate Tribunal for Electricity vide order dated 23.1.2025 in Appeal No. 277 of 2024. Considering the above, the Commission directed the issue of a notice to the Respondents, subject to just exceptions and the respondents were provided six weeks’ time to file a reply, if any.

Submissions of Respondent-NRPC:

5. Respondent NRPC vide letter dated 02.09.2025 has submitted that:

- a) The facts of the case are the same except for the “Revised Standard Operating Procedure for Shifting of Transmission Lines for other Infrastructure Projects” dated 14.1.2025, issued by the CEA. The Reply of NRPC is the same as submitted vide letter dated 06.08.2024 to the Appellate Tribunal for Electricity and vide letter dated 14.02.2023 to the Central Electricity Regulatory Commission.
- b) Petitioner has submitted that SOP dated 10.03.2023, as well as revised SOP dated 14.01.2025, both of which are for the shifting of transmission lines due to development projects. Petitioner- NRSSXXIX has not established that the shifting of the line was required for the expansion of the road by BRO.



c) BRO, vide dated 24.08.2021, addressed to IndiGrid, has mentioned that BRO had already written a letter to the Power Distribution Department (PDD), Rajouri and Poonch, vide letter dated 13.09.2018, with a request to make available all estimates for shifting of electrical utilities, including HT lines/towers, if any. Joint site visits were also conducted thrice on 30.09.2018 (Rajouri to DKG), 05.02.2019 (DKG to Surankote) and 13-14 Feb 2019 (Surankote Bypass), with the concerned PDD officials. BRO has stated that they have ensured to propose the nearest road edge with a horizontal clearance of at least 10 m from the existing towers as required by Clause 5.1 of the IRC: 32 Specifications. Further, the scientists from CSIR-CBRI inspected the site on 23.12.2021 to assess the possible reasons for the development of cracks and distress in the transmission tower. They have mentioned that the probable causes for the distress need to be established through scientific/ elaborate investigation. However, NRPC has not received any report of a further scientific/ or detailed investigation to find out the possible reasons for the development of cracks and distress in the transmission tower.

Rejoinder to the Reply of NRPC by the Petitioner:

6. Petitioner's rejoinder dated 26.09.2025 sets out the following submissions:

- a) NRPC in its present reply has failed to address the specific submissions and averments advanced in the Petition and has merely relied on its earlier reply dated 14.02.2023 filed in Petition No. 318/MP/2022. SOP clearly envisages grant of deemed availability for outages for cases similar to that of the SA Line occasioned by road construction or infrastructure works undertaken by agencies such as the BRO, irrespective of the date of application, thereby extending consideration even to cases of past line shifting wherein outage of transmission line required for such shifting was considered as deemed available without attributing any fault on any of the developers.
- a) NRPC has erroneously framed the issue as one of force majeure, whereas the Petitioner has never predicated its case on natural calamity. Rather, the Petitioner has consistently maintained that the outage was caused by unauthorised excavation by BRO near Tower 286, undertaken in violation of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 and without the Petitioner's permission, thereby destabilising the slope and impairing the tower.
- b) The present Petition is strictly limited to relief under Clause 14 of the revised SOP dated 14.01.2025, which specifically covers outages caused by infrastructure

development activities of agencies such as BRO, NHAI, and Railways, and directs that such outages be recognised as deemed available.

- a) NRPC's reliance on BRO's letters of 13.09.2018 and 24.08.2021 and on joint site visits conducted in 2018 and 2019 is wholly irrelevant. Past assurances of maintaining a 10 m clearance cannot absolve BRO of its subsequent unauthorised excavation near Tower 286 in 2021. Clause 11 of the SOP dated 14.01.2025 clearly provides that no cutting of soil, even beyond 10 m in the case of towers situated on hill slopes, shall be permitted without the written consent of the owner. communications and site inspections were neither marked to nor involved the Petitioner, which is the owner of the impacted tower.
- b) The CSIR-CBRI report was aimed solely at devising long-term stabilisation and protective measures for the hill slope, and not for establishing causation. The report did not call for additional inquiry into the cause of damage but merely suggested further study to design suitable measures to safeguard the slope and ensure structural stability in the future.
- c) Petitioner's inability to conduct further investigation post the CBRI report was not due to any omission or lack of diligence, but rather a consequence of uncontrollable environmental factors. As the impacted tower was bypassed, this resulted in the complete omission of the unstable hill slope, and hence, there was no cause for the Petitioner to conduct any further studies of the affected hill slope.
- d) Petitioner is not joining issues with BRO, as that dispute is already pending before the Hon'ble Tribunal. The present Petition is confined solely to relief under Clause 14 of the revised SOP dated 14.01.2025, which expressly provides that past outages arising from infrastructure works of agencies such as BRO, NHAI, and Railways be treated as deemed available.

Hearing dated 11.11.2025:

- 7. During the course of the hearing, the learned counsel for Petitioner put forth the facts of the case. After hearing the parties, the Commission reserved the matter for Order with liberty to the parties to file their respective written submissions, if any.

Written Submission of Petitioner:

8. Petitioner vide its written submissions dated 29.11.2025 has mainly submitted its earlier arguments. Additionally, Petitioner has submitted as under:

(a) Petition No. 318/MP/2022, could not examine the substantive entitlement of the Petitioner, as the then existing SOP dated 10.03.2023 was prospective and excluded the SA Line outage of January–February 2022. Hence, the earlier decision was not a pronouncement on rights but a consequence of the absence of enabling law.

(b) Subsequently, the legal landscape has undergone a fundamental change. The revised SOP dated 14.01.2025 now provides, under Clause 14, that applications for deemed availability shall be considered “irrespective of the date of application”. This express removal of the earlier temporal prohibition creates a fresh statutory entitlement that did not exist when the previous Petition was decided. SOP dated 14.01.2025 also introduces, for the first time, a mandatory recognition of deemed availability for outages necessitated by national infrastructure works undertaken by BRO, NHAI, Railways, etc., provided beneficiaries are not adversely impacted.

Analysis and Decision:

9. Petitioner, NRSS XXIX Transmission Limited (NTL), has constructed a 400 kV D/C Sambha - Amargarh transmission line routed through Akhnoor/ Rajouri (hereinafter referred to as “SA Line”). Petitioner has submitted that the downhill slope of tower no 286 and the revetment wall of tower no. 286 of the SA line developed cracks due to massive excavation work by BRO in the downhill section, resulting in downhill movement of the land mass near the said tower (Tower No. 286). The SA line was under shutdown from 20.01.2022 to 08.02.2022 for works related to de-stringing and re-stringing at locations 285, 286, and 287 to bypass the impugned tower 286, where damage/ cracks in the land and stress in the tower had been observed.

10. Petitioner requested NRPC for the grant of deemed availability for the period 20.01.2022 to 08.02.2022, during which the transmission line was under shutdown for work related to bypassing tower no. 286 by considering the excavation work by BRO as a force majeure event.



11. NRPC found no concrete evidence that the tower was under stress due to a natural calamity. It further viewed the matter as a bilateral issue between BRO and NTL, and, accordingly, denied deemed availability. The matter was also referred to the Chairperson, CEA, at the Petitioner's request. However, the CEA did not consider the request for deemed availability.
12. Petitioner approached the Central Commission to grant availability of the SA line to the Petitioner, excluding the outage period of the transmission line from 20.01.2022 to 08.02.2022. This Commission, vide Order dated 19.04.2024 in Petition No. 318/MP/2022, upheld NRPC's decision not to grant deemed availability to the SA line during the outage period from 20.01.2022 to 08.02.2022.
13. Aggrieved by the Commission's Order dated 19.04.2024 in Petition No. 318/MP/2022, the Petitioner filed an appeal bearing no. 277/2024 in APTEL. APTEL vide Order dated 23.01.2025 in IA no 948/2025, filed by the Petitioner for interim relief in the Appeal 277/2024, based on the request of the Petitioner, permitted to approach this Commission for any relief as available under law. The relevant extract of said Order is as under:

*"After arguing for a considerable length of time, Mr. Shri Venkatesh, learned Counsel for the Appellant, would submit that, **in the light of the instructions issued by the Central Electricity Authority (CEA) on 14.01.2025, the Appellant be permitted to withdraw the IA with liberty to approach the CERC, on the basis of these proceedings, for appropriate relief,***

*While we may **not be understood as having expressed any opinion on the applicability or otherwise of the CEA instructions dated 14.01.2025 to the facts and circumstances of the present case, we see no reason to deny the Appellant liberty from availing such remedies as are available to them in law insofar as the proceedings dated 14.01.2025 are concerned.** The IA is, accordingly, dismissed as withdrawn with liberty to the Appellant to avail the appropriate legal remedies available to them in law."*

As per the above, the APTEL permitted the withdrawal of the IA for interim relief, based on the request of the Petitioner to approach CERC, without expressing any opinion on the applicability of CEA instructions dated 14.01.2025 on the case.

14. We have considered the submissions of the Petitioner and Respondents and perused the information available on record. Petitioner is praying that the 'Revised Standard

Operating Procedure for shifting of transmission line for other infrastructure projects' dated 14.01.2025, issued by the Central Electricity Authority (CEA), grant deemed availability to the SA line. The issue which arises for our consideration is as under:

ISSUE: Whether the Petition is admissible and the SA line is eligible for the grant of deemed availability in light of the 'Revised Standard Operating Procedure for shifting of transmission line for other infrastructure projects' dated 14.01.2025 issued by the CEA.

15. The Relevant extracts of the Order dated 19.04.2024 in Petition No. 318/MP/2022 are as below:

“

26...We have considered the submissions of the Petitioner and the Respondents and perused the records. The issue that arises for our consideration is **“Whether the outage from 20.01.2022 to 08.02.2022 can be excluded from the total time considered for calculating availability considering it as an outage due to a Force Majeure event”**

....

28...As per the above, force majeure is any event or circumstance or combination of events/circumstances not within the reasonable control of the affected party that, directly or indirectly, prevented the discharge of obligations under TSA, subject to the condition that these events could not have been avoided even if the affected party had adopted prudent practices. Further, the affected party is mandated to give notice within 7 days of the occurrence of the alleged Force majeure event. We observe that though the **Petitioner is claiming availability under a force majeure event, it has not served any notice in this regard to LTTCs, which is a mandatory requirement to claim any event as a force majeure event.**

29 (v). NRPC vide letter dated 14.02.2023 clarified the reasons for not considering the request of the petitioner for deemed availability. The relevant extracts are as under:

“

(i) It is noted that CSIR-CBRI Roorkee's inspection report has highlighted that probable cause of the distress in transmission tower (286/0) is continuous removal of material from bottom of slope. Reports findings are mainly based on the inputs given by local inhabitants and IndiGrid Officials and Scientists have expressed the need for scientific/ elaborate investigation. There is no documented incidence of natural calamity at the site. The report nowhere mentioned natural calamity as cause.

(ii) In view of above NRPC did not found that incident was due to natural calamity. Therefore, it was decided not to consider natural calamity as defined in regulation 3(25) of CERC (Terms and Conditions of Tariff) Regulation, 2019. The matter was felt bilateral issue between BRO and NTL.

....



- i. Further, the photographs and patrolling report were received from NTL vide email dated 26.07.2022 and 01.08.2022. NRPC Sectt. put a lot of effort in analysing the cause of the incident and after scrutiny, it was found that photographs of May, June and & July 2021 have no sign of crack in the revetment wall of the impugned tower no. #286. Further, it was found that tower #286 has bracket bends recorded in the patrolling report of the month of Jan and Feb 2021. Thus, on one hand there was no crack before Aug 2021 but there was some bends in tower before August' 2021. However, concrete inference could not be drawn based on photographs that tower was in stress due to natural calamity.
- ii. It is emphasized that licensee is required to carry out regular inspection and maintenance of the line wherein such damage to the tower could have been come their notice at the initial stage itself and situation might not have been deteriorated."

30. From the above paragraph, we observe that while the Petitioner is claiming that the cracks are attributable to the actions of BRO, BRO is suggesting that a geo-investigation report needs to be taken from the Petitioner and studied to see if the design of the foundation of the tower was in accordance with the conditions of the soil. Further, BRO has claimed that the tower is located on a slip plane. Petitioner has not submitted the soil investigation report to the Commission despite seeking it in the ROP. **Scientists, in their report, as referred to in the above paragraph, have also not been able to conclude on the reasons for cracks and suggested that a detailed investigation needs to be carried out to arrive at a conclusive finding.** Further, we observe that **NRPC did not find that the incident was due to natural calamity.** Therefore, NRPC decided not to consider the case of the Petitioner for excluding such a period while calculating the availability. NRPC also felt that the matter was a bilateral issue between BRO and NTL. **We also observe that it was BRO's contractor who informed the Petitioner about the cracks in October 2021, and the Petitioner did not notice the cracks during patrolling.**

In light of all these observations, it cannot be concluded whether the Petitioner carried out an appropriate soil investigation or not before installing the tower. We further observe that the Petitioner, vide its **letter dated 10.08.2021 to BRO, had informed that the road widening project had been initiated without obtaining necessary sanctions and clearances, which shows that the petitioner knew as early as in August 2021 that BRO was doing excavation work near the said tower.** Therefore, the petitioner should have taken prudent action to avoid deterioration of the site, even if it claims that stress was due to the action of BRO. We also take note of NRPC submissions that **after scrutinizing the patrolling photographs of January 2021 and February 2021, it was found that there were bracket bends in the tower no 286, indicating that the tower was under stress even prior to excavation work by BRO at the impugned site.** Considering these observations, we are of the view that the outage of the transmission line during January/February 2022 **cannot be attributed to a force majeure event.** In our view, it could have been avoided if prudent practices had been adopted by the petitioner, as noted by NRPC. Hence, we uphold the decision of NRPC for not considering the request

of the petitioner for deemed availability during the outage period from 20.01.2022 to 08.02.2022.

In view of the above discussions, all the prayers of the Petitioner are rejected.”

As per the above, the request for grant of deemed availability during the outage period from 20.01.2022 to 08.02.2022 was rejected, observing that the outage was not due to force majeure and this could have been avoided by adopting prudent maintenance practices by the Petitioner.

16. The Petitioner has submitted that it does not seek the reopening of technical or factual findings recorded earlier in Order 19.04.2024 in Petition No. 318/MP/2022, which are presently under challenge before the Appellate Tribunal. The prayers of the Petitioner are limited to whether the deemed availability for the period 20.01.2022 to 08.02.2022 is required to be examined and granted afresh in terms of the CEA Revised Standard Operating Procedure dated 14.01.2025 by the NRPC.

17. Petitioner has made the following grounds under which the Revised SOP dated 14.01.2025 permits the grant of deemed availability:

- a. The SOP dated 10.03.2023 was prospective in nature; as a result, it did not extend relief to past events, i.e., from 20.01.2022 to 08.02.2022, which is the case of the Petitioner. However, SOP dated 14.01.2025 removed the temporal limitation and allowed TSPs to apply for deemed availability certification irrespective of the date of shutdown.
- b. Revised SOP dated 14.01.2025 permits retrospective relief for the grant of deemed availability for past outages arising from the shifting or alteration of transmission lines.

18. NRPC has submitted that the SOP dated 10.03.2023, as well as the revised SOP dated 14.01.2025, both are for the shifting of transmission lines due to development projects. In the instant case, Petitioner has neither established that the shifting of the SA line nor the developments of cracks or distress in the transmission tower were due to the expansion work of the road by the BRO.

19. The relevant extracts of the revised SOP dated 14.01.2025, which have been claimed by the Petitioner allows grant of deemed availability, are as under:

"STANDARD OPERATING PROCEDURE FOR SHIFTING OF TRANSMISSION LINES FOR INFRASTRUCTURE PROJECTS"

Several projects relating to transport, energy, mining, irrigation, industry, real estate, utilities etc., of national importance and serving wider public interest are executed across the country. These projects include those undertaken by the National Highways Authority of India (NHAI), Indian Railways, Airports Authority of India, Border Roads Organization (BRO), and Irrigation Departments etc. (hereinafter referred to as "Project Developers")

...

2. Projects of National Importance or Serving Wider Public Interest

...

4. This SOP shall be applicable only for cases where the Project Developers provide alternate Right of Way (RoW) for shifting and not applicable for multi-circuiting on adjoining lines in the vicinity.

...

Detailed procedure to be followed by Project Developers and Owners of transmission lines for shifting of transmission lines

...

11) No cutting of soil within ten (10) meters from the tower structure of 110 kV and above voltage level shall be permitted without the written permission of the Owner of tower structure. For towers located on hill slope, extra precautions shall be taken to ensure that any cutting/ excavation on that hill does not compromise the safety and integrity of the tower structure and if it is expected that the stability of hill may be compromised due to cutting/ excavation work, even for distance beyond 10 m. the written permission of the Owner of tower structure shall be taken before commencing any such activity.

...

13) The request for requirement of shutdown of existing transmission line for work of shifting or altering shall be submitted to the respective Regional Power Committee (RPC) or State Load Dispatch Centre (SLDC), as applicable, well in advance by the Owner of the transmission line. The work shall be completed in the minimum possible time and the following shall be ensured:

- (a) Long Duration Shutdowns shall be avoided during peak months which may cause Total Transfer Capacity (TTC)/Available Transfer Capacity (ATC) curtailment and generation curtailment, affecting grid reliability.
- (b) Deferment of Approved Shutdowns shall be avoided.
- (c) Extension beyond Approved Dates of shutdown shall be avoided.
- (d) Repeated Shutdowns on the same line to be avoided.
- (e) Emergency Restoration Systems (ERS) to be used to avoid for critical outages, affecting system integrity.
- (f) Shutdowns shall be planned after resolving Right of Way (RoW) issues.
- (g) Project Developer to provide adequate notice of shutdowns to RPC, RLDC, or SLDC for violating the conditions of SOPs.

14) As per Ministry of Power's OM No. 34-311812022-Trans dated 03.08.2022, the Regional Power Committee (RPC) Secretariat shall provide deemed availability certificate for the shutdown period availed by transmission licensee (both Regulated Tariff Mechanism and Tariff Based Competitive Bidding) for shifting of their ISTS lines, provided the transmission customers are not affected by the shutdown of the line. **All such applications for deemed availability shall be considered irrespective of date of application.**



15) For the cases where deemed availability certificate for the shutdown period is not issued to transmission licensee for the shutdown period or part thereof, then in such cases, charges towards loss of availability due to such shutdowns shall be borne by Project Developer.

.....

Annexure-1

Detailed procedure to be followed by Project Developers and Owners of transmission lines for shifting of transmission lines

1) **Application.** Once a transmission line (overhead or underground) is erected, if a Project Developer plans to undertake any construction-such as roads, railway tracks, airports, dams, flood banks or additions/alterations to existing infrastructure-whether permanent or temporary, which may:

- Affect the safety, reliability, availability, or clearances of the transmission line,
or
- Necessitate the shifting of all or part of the transmission line,”

As per the above, the revised SOP dated 14.01.2025 is applicable to the cases where Project Developers herein BRO/ NHAI, etc., provide alternate Right of Way (RoW) for the shifting of transmission line or the case wherein availability and clearances of transmission lines get affected. Further, the revised SOP provides for considering applications for deemed availability irrespective of the date of application.

20. The relevant extracts of SOP dated 10.02.2023 are as under:

*“15. As per Ministry of Power's OM No. 34-311812022-Trans dated 03.08.2022, the RPC Secretariat shall provide deemed availability certificate for the shutdown period availed by transmission licensee (both RTM and TBCB) for shifting of their ISTS lines for all National Infrastructure Projects of NHAI, Railways, BRO etc., provided transmission customers are not affected by the shutdown of the line. **All such applications for deemed availability shall be considered irrespective of date of application. However, deemed availability for past shifting of lines, where the diversion work has already been completed, shall not be considered.**”*

16. For the cases where deemed availability certificate for the shutdown period is not issued to transmission licensee for the shutdown period or part thereof, then in such cases, charges towards loss of availability due to such shutdowns shall be borne by Infrastructure Developer.”

As per the above, the applications for deemed availability are to be considered irrespective of the date of application. However, cases in which diversion work has been completed shall not be considered.

21. The relevant extracts from the Ministry of Power OM dated 03.08.2022, under which the SOP dated 10.02.2023 and revised SOP dated 14.01.2025 have been issued are as under:

“OFFICE MEMORANDUM

Subject: Policy on shifting of transmission lines by transmission licensee for other infrastructure projects-regarding

The undersigned is directed to say that a number of references have been received from other infrastructure departments like National Highways Authority of India Ltd (NHAI) for waiver of transmission charges for the shutdown period availed by transmission licensee for shifting of their transmission lines.

2. The matter has been considered in the Ministry. It has been noted that generally customers of transmission lines are not affected by shutdown of a particular transmission line during the period of shifting of utilities, because of redundancy in the power system. Accordingly, it has been decided that:

(i) RPC Secretariat shall provide deemed availability certificate for the shutdown period availed by transmission licensees (both RTM and TBCB) for shifting of their Inter State Transmission System (ISTS) lines for all national importance infrastructure projects of NHAI, Railways, BRO etc., provided that transmission customers are not affected by the shutdown of the line.

(ii) All such applications for deemed availability shall be considered irrespective of date of application. However, deemed availability for past shifting of lines, where the diversion work has already been completed, shall not be considered.

(iii) A consolidated Standard Operating Procedure for shifting of Transmission line by transmission licensees for other infrastructure projects shall be prepared by CEA and submitted to the Ministry. The same will be put up for approval of the Competent Authority in the Ministry.

(iv) The CERC shall make necessary changes quickly in the CERC (Terms and Conditions of Tariff) Regulations to enable declaration of deemed availability certificate by Regional Power Committees for shifting of transmission lines for other infrastructure projects, provided that transmission customers are not affected by the shutdown of the line.

3. This issues with approval of the Hon'ble Minister of Power and New & Renewable Energy.”

Both the SOPs provided that deemed availability is to be provided in terms of the above MOP OM by the concerned RPC secretariat, irrespective of the date of applications. However, the above OM excludes deemed availability cases in which diversion work has already been completed.

- 22.** The MOP Office Memorandum dated 03.08.2022 and SOP dated 10.02.2023, clearly spelt out that deemed availability to the licensee is to be provided by the concerned RPC secretariat, in the cases of shifting ISTS lines for developing national infrastructure by NHAI, Railways, BRO, etc., subject to transmission customers not being affected by the shutdown of transmission lines. Further, the applications for deemed availability are to be considered irrespective of date of application; however, earlier cases wherein diversion work has already been completed were denied for consideration. Accordingly, vide OM and related SOP dated 10.02.2023, all the previous cases, i.e., the cases prior to 03.08.2022 wherein shifting work has been completed were debarred for any consideration.
- 23.** Petitioner has submitted that the shutdown of the SA line was for the period 20.01.2022 to 08.02.2022, hence, was not covered by the SOP dated 10.02.2023 applicable at that time. However, as per the revised SOP dated 14.01.2025, the provision for already completed shifting of lines has been removed; therefore, its application becomes fit to be considered under the revised SOP 14.01.2025. Accordingly, directions may be issued to NRPC to certify the availability of the SA line, excluding the outage period from the total period under consideration.
- 24.** The extracts relevant to the grant of deemed availability in MOP OM, SOP dated 10.02.2023 and revised SOP dated 14.01.2025 are as under:

MOP OM dated 03.08.2022	SOP dated 10.02.2023	Revised SOP dated 14.01.2025
(i) RPC Secretariat shall provide deemed availability certificate for the shutdown period availed by transmission licensees (both RTM and TBCB) for shifting of their Inter State Transmission System (ISTS) lines for all national importance infrastructure projects of NHAI, Railways, BRO etc., provided that transmission customers are not affected by the shutdown of the line. (ii) All such applications for deemed availability shall be considered irrespective of date of application. However, deemed availability for past shifting of lines, where the diversion work has already been completed, shall not be considered.	15. As per Ministry of Power's OM No. 34-311812022-Trans dated 03.08.2022, the RPC Secretariat shall provide deemed availability certificate for the shutdown period availed by transmission licensee (both RTM and TBCB) for shifting of their ISTS lines for all National Infrastructure Projects of NHAI, Railways, BRO etc., provided transmission customers are not affected by the shutdown of the line. All such applications for deemed availability shall be considered irrespective of date of application. However, deemed availability for past shifting of lines, where the diversion work has already been completed, shall not be considered.	14)As per Ministry of Power's OM No. 34-311812022-Trans dated 03.08.2022, the Regional Power Committee (RPC) Secretariat shall provide deemed availability certificate for the shutdown period availed by transmission licensee (both Regulated Tariff Mechanism and Tariff Based Competitive Bidding) for shifting of their ISTS lines, provided the transmission customers are not affected by the shutdown of the line. All such applications for deemed availability shall be considered irrespective of date of application.

Comparative reading of the revised SOP dated 14.01.2025 and SOP dated 10.02.2023 on the issue of grant of deed availability, it can be understood that both SOPs provide that applications for deemed availability are to be considered irrespective of the date of application; however, the revised SOP has no exclusion of cases wherein diversion work has already been completed. It is a fundamental legal principle that a statute or rule provides no retrospective application unless they expressly state, or by necessary implication demonstrates, that they are meant to apply retrospectively. Here, a revised SOP has been issued to bring greater clarity, simplify and streamline the SOP dated 10.02.2023.

- 25.** Even if it is presumed that the revised SOP is applicable to the Petitioner's case for the period January-February 2022, such an assumption would lead to ambiguity, in a manner that SOPs have an overriding effect on the OM dated 03.08.2022. The SOP dated 10.02.2023, as it records that deemed availability cases for past shifting of lines, where the diversion work has already been completed, shall not be considered, would mean that the cases between 03.08.2022 and 10.02.2023 shall also not get covered under this SOP, rejecting MOP OM stipulations. Accordingly, MOP OM is the cut-off date for considering or rejecting deemed availability cases. As earlier SOP dated 10.02.2023 has been replaced by the revised SOP, not the MOP OM dated 03.08.2022. Accordingly, the revised SOP, as per the presumption, would be lenient to accept cases up to the date of MOP OM dated 03.08.2022.
- 26.** In our considered view, the revised SOP is neither a statute providing compulsory deemed availability to the TSPs, nor any amnesty scheme, so that all applicants having shut down are to be granted the deemed availability. Likewise, there is a provision that where no deemed availability is granted, the charges towards loss of availability are to be borne by the infrastructure Project Developer, which means in such cases the issue is bilateral in nature. It is also construed that there is neither any written provision nor any demonstration of retrospective application of the revised SOP.
- 27.** As discussed above, the revised SOP dated 14.01.2025 does not create any right to the Petitioner that deemed availability to be granted by NRPC. NRPC has also submitted that it is not established that the shifting of the SA line or the development of cracks or distress in the transmission tower, was due to the expansion work of the road by the BRO. We are of the opinion that the matter of deemed availability has already

been decided by the NRPC and CEA and upheld by the Commission vide Order dated 19.04.2024 in Petition No. 318/MP/2022, wherein clear observations were made that the outage could have been avoided by the Petitioner, if prudent utility practices had been adopted. NRPC has submitted that the SOP dated 10.03.2023, as well as the revised SOP dated 14.01.2025, are both for the shifting of transmission lines due to development projects. In the instant case, Petitioner has neither established that the shifting of the SA line nor the development of cracks or distress in the transmission tower were due to the expansion work of the road by the BRO.

28. Accordingly, in our considered view, the revised SOP dated 14.01.2025 is neither relevant nor enforceable on the NRPC to certify the availability of January 2022 and February 2022, in respect to the SA line after excluding the outage from 20.01.2022 to 08.02.2022, so no further directions are required to be issued to NRPC in this case.

29. We are of the opinion that the Petition lacks sufficient grounds to be admitted; accordingly, the Petition as well as the prayers of the Petitioner stand rejected.

30. The Petition No. 558/MP/2025 is disposed of in terms of the above.

Sd/-
(Ravinder Singh Dhillon)
Member

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson